

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

North Central Cooperative
417 3rd Avenue SW
Clarion, IA 50525

**ADMINISTRATIVE
CONSENT ORDER**
2008-WW- 35
2008-HC- 02

TO	Mike Nail, Registered Agent 221 4 th Avenue, NW Clarion, IA 50525	North Central Cooperative P.O. Box 313 Clarion, IA 50525
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I. SUMMARY

The Iowa Department of Natural Resources (Department) and North Central Cooperative (NCC) hereby agree to the following Administrative Consent Order (Order). NCC agrees to immediately repair its leaking "urea ammonia nitrate" (UAN) tanks, properly dispose of all ammonia-contaminated water in its UAN tanks' secondary containment system, pay \$8,488.04 in fish restitution costs, and pay an administrative penalty of \$10,000. See Sections IV and V for more details. In the interest of avoiding further litigation the parties have agreed to these provisions.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

David Hopper
Iowa Dept. of Natural Resources FO#2
2300 15th Street S.W., PO Box 1443
Mason City, IA 50401
Ph: 641/424-4073

Relating to legal requirements:

Tamara Mullen, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8934

I. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code section 455B.386 and 481A.151, which authorizes the assessment of a penalty for the violation of notification provisions contained in Iowa Code Chapter 455B, Division IV, Part 4 (hazardous condition) and the rules promulgated thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (I.A.C.) chapter 10, which authorizes the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. NCC is a farm service business located in southwest Clarion, Iowa. It stores and sells fertilizers and herbicides to farmers for row crop application.
2. NCC is physically located at 417 3rd Avenue SW, Clarion, but its home office is registered with the Iowa Secretary of State as P.O. Box 313 Clarion, Iowa.
3. On July 31, 2008 the Department's Field Office (FO) #2 received a report that dead fish were in Little Eagle Creek at the Hwy 3 Bridge in Clarion, IA. Environmental specialist David Hopper investigated, noting between 150-200 dead fish at this location and water field tests showed high levels of ammonia. Additional samples were collected for laboratory testing; results: 4.1 mg/L NH₃ (quantitation limit 0.05 mg/L).
4. From the Hwy 3 Bridge, Mr. Hopper proceeded upstream, collecting more samples at a location about ½ mile south of the Keokuk Avenue Bridge. At this point, a drainage ditch feeds into Little Eagle Creek. Around 50 dead fish were noted and water field tests showed high levels of ammonia. Additional samples were collected for laboratory testing; results: 2.3 mg/L (quantitation limit 0.05mg/L).
5. Mr. Hopper followed this drainage ditch and located a bulkhead approximately 500 yards East-Northeast of the Hwy 3-Keokuk Avenue intersection. Several tiles discharge into this drainage ditch, including a 60-inch tile that was actively draining at the time and contained roughly 20 dead fish. Water field tests showed high levels of ammonia.
6. Mr. Hooper contacted the City of Clarion to inquire into this tile and was told it is a storm sewer outfall for the city, receiving water from the north and western portions of the city. Mr. Hopper and a city official conducted field tests for ammonia at several manholes associated with the tile, including one at the intersection of 4th Street and 3rd Avenue, revealing greater than 3.0 mg/L for ammonia.
7. NCC is located northwest of the 4th Street/3rd Avenue intersection. Due to its fertilizer-based operation, Mr. Hopper visited the property to conduct an inspection but the office was closed. A visual inspection showed three metal tanks within concrete secondary containment, later identified to contain "urea ammonia nitrate" (UAN). Liquid present in the secondary containment appeared to be a mixture of rain water and product; a field test indicated high levels of ammonia. A sample was collected for laboratory testing, revealing 5,800 mg/L ammonia (quantitation limit 0.05mg/L).
8. Mr. Hopper concluded his July 31, 2008 investigation by collecting samples at the Little Eagle Creek and Eagle Creek convergence point, approximately ½ mile north of the 240th Street Bridge. Around 50 dead fish were noted at this location and field tests showed high

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levels of ammonia. Additional samples were collected for laboratory testing; results: 16 mg/L NH₃ (quantitation limit 0.05 mg/L).

9. On August 1, 2008 FO #2 environmental specialist Cindy Garza returned to NCC to conduct an inspection.
10. NCC employee Kelly Raasch informed Ms. Garza that the liquid in the secondary containment surrounding the three UAN tanks is occasionally pumped out. Ms. Garza noted a water mark 6 inches above the current liquid level, indicating a recent release. Ms. Garza also noted UAN dripping from the tanks into the secondary containment.
11. Mr. Raasch stated the liquid would be pumped into the parking lot on the side of the storage building. The flow path went into a pipe, along the back of the building, finally entering a gravel-surrounded intake. This intake led to the tile, and eventually both Little Eagle Creek and Eagle Creek.
12. NCC's release of ammonia-contaminated water into Little Eagle Creek and Eagle Creek resulted in 27,109 dead fish.
13. NCC was issued a Notice of Violation on September 15, 2008 for an illegal discharge to a water of the state; violating water quality standards; a fish kill; and creating and failing to report a hazardous condition.
14. This matter was referred to the Department's Legal Services Bureau on September 15, 2008 for enforcement action.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.186(1) and 567 I.A.C. 62.1(1) prohibit the discharge of "a pollutant" into "a water of the state" unless it is released pursuant to a valid permit issued by the director. "National Pollution Discharge Elimination System" (NPDES) permits are issued to point sources pursuant to Iowa Code section 455B.197 and 567 I.A.C. chapter 64. The Environmental Protection Commission (Commission) has adopted federal effluent limitation standards by reference, and imposed different standards when necessary to comply with applicable water quality standards. See 567 I.A.C. 62.8(2).
2. A "pollutant" is defined in Iowa Code section 455B.171(18) as "sewage, industrial waste, or other waste." Ammonia-contaminated water constitutes "other waste" under Iowa Code section 455B.171(15) due to its chemical components.
3. Little Eagle Creek and Eagle Creek are "waters of the state" pursuant to Iowa Code section 455B.171(37) which defines the term to include "any stream, . . . watercourse, waterway, . . .

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drainage system, and any other body or accumulation of water . . . public or private, which are contained within . . . the state”

4. Iowa Code section 455B.173 states that the Commission shall develop water quality standards which shall, at a minimum, maintain the existing quality of the water of the state. The Commission has done so in 567 I.A.C. chapter 62.
5. 567 I.A.C. 62.3(2) states that all surface waters of the State “shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations . . . acutely toxic to . . . animal life. . . [and] [f]rom substances in quantities which would produce undesirable or nuisance aquatic life.” The ammonia-contaminated water resulting in a fish kill is a violation of this provision.
6. Iowa Code section 455B.386 and 567 I.A.C. 131.2 requires a person “storing, handling . . . or disposing of a hazardous substance” to notify the Department and the local police department of the “occurrence of a hazardous condition as soon as possible but not later than six hours after [its] onset” A hazardous condition is any situation involving the “actual, imminent, or probable spilling, leakage, or release of a hazardous substance onto the land or water of the state . . . which creates an immediate or potential danger to the . . . environment.” IOWA CODE § 455B.381. A “hazardous substance” includes any substance labeled as such under the Clean Water Act (CWA). *Id.* The CWA lists ammonia as a hazardous substance. *See* 40 C.F.R. § 117.3. As such, when NCC discharged ammonia-contaminated water into the environment resulting in a fish kill, it created a hazardous condition as defined; its failure to report this condition is a violation of the law.
7. Iowa Code section 481A.151 states that any person who is liable for polluting water of the state in violation of state law shall be required to pay restitution for any resulting injury to wild animals. This section authorizes the Natural Resources Commission (NRC) to adopt rules applicable to the method of calculating restitution assessments and authorizes the Department to recover these restitution assessments through contested case procedures under Iowa Code chapter 17A. The NRC has adopted these rules in 571 I.A.C. 113.
8. Pursuant to 571 I.A.C. 113 and 567 I.A.C. 133.6, the Department has calculated the monetary value for loss of fish and associated investigatory costs resulting from NCC’s illegal discharge of ammonia-contaminated water to be \$8,488.04.

V. ORDER

THEREFORE, the Department hereby orders and NCC agrees to the following:

1. NCC shall immediately repair or remove the leaking UAN tanks so as to prevent another release.

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2. NCC shall properly dispose of the remaining contaminated water in the secondary containment surrounding the UAN tanks by land applying at agronomic rates.
3. NCC shall pay to the order of the "Iowa Department of Natural Resources" an administrative penalty of \$10,000 within 30 days after issuance of this Order.
4. NCC shall pay to the order of the "Iowa Department of Natural Resources" \$8,488.04 for fish restitution costs as described in this Order within 30 days after issuance of this Order.

VI. PENALTY

Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Noncompliance with Iowa Code section 455B.386 subjects a violator to a \$1,000 penalty.

HAZARDOUS CONDITON VIOLATION: \$1,000

Additionally, Iowa Code sections 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties. See 567 I.A.C. 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty.

ECONOMIC BENEFIT: By pumping the ammonia-contaminated water to the ground surface, NCC avoided the costs associated with properly treating and disposing contaminated water. As such, \$3,000 is assessed for this factor.

GRAVITY: NCC's failure to properly treat and dispose of ammonia-contaminated water resulted in the contamination of over 4.17 miles of stream and the death of over 27,000 fish. Additionally, tax payers' money and Department time were spent investigating this event. As such, \$3,000 is assessed for this factor.

CULPABILITY: NCC should be aware of ammonia's adverse environmental effect if mishandled. The leaking of ammonia into a secondary containment system, which was then emptied directly into the environment without testing or treating is pure negligence, borderline willful misconduct. This fish kill was entirely avoidable. Accordingly, \$3,000 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175, and 561 I.A.C. 7.5(1), as adopted by reference by 567 I.A.C. chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of NCC. By signing this Order all rights to appeal this Order are waived.


VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



MIKE NAIL, on behalf of NORTH CENTRAL COOPERATIVE

Dated this 18 day of December, 2008

for 
RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 30th day of December, 2008

North Central Cooperative: David Hopper; Jeff Vansteenburgh; Dennis Ostwinkle; Tamara Mullen; I.C.1 and 6(a); IV.A and G.